FATIMAH BT. DERAKMAN

v.

WAN JUSOH BIN WAN KOLOK & ANOR.

HIGH COURT MALAYA, KUANTAN
DATO' HAJI LAMIN BIN HAJI MOHD YUNUS FCJ
[CIVIL SUIT NO. 27 OF 1985]
9 AUGUST 1994

TORT: Road accident - Plaintiff's car stationary at centre white line - Plaintiff's car collided into by defendants' van - Plaintiff giving evidence as to how the accident happened - Defendants not calling any witnesses - Consideration of the silent evidence - Sketch plan and key - Point of impact - Liability - Plaintiff suffering serious injuries - Quantum of damages.

The plaintiff was a passenger in a car driven by her husband. The plaintiff gave evidence that the car was stationary on the centre white line of the road intending to turn right when it was collided into by the van driven by the defendants. The sketch plan indicated that the broken pieces of glass was found at the centre white line of the road. The defendants did not call any witnesses. The plaintiff suffered severe injuries and sought damages.

Held:

[1] In the absence of evidence to the contrary, it is always a safe guide to adopt that the point of impact is at or around the point where the pieces of glass are mostly found. It was clear from the sketch plan that the broken pieces of glass were mostly found around the centre white line of the road and this corroborated the evidence of the plaintiff that the car was stationary and on the centre white line intending to turn right at the time of impact.

[2] Since the defence did not produce any evidence to dispute this and took the option of not producing any witnesses, the plaintiff's evidence that the car was stationary and on its correct side of the road when the collision occurred had to be accepted. In the circumstances the driver of the van was solely to blame for the accident.

[3] The plaintiff is entitled to a sum of RM69,500 for pain and suffering, RM33,600 for post-trial loss of earnings, RM47,400 for pre-trial loss of earnings, RM2,000 for cost of food and travelling and RM229 as agreed special damages. The plaintiff is also entitled to interest on all the sums, except for the sum awarded for post-trial loss of earnings, and costs.

[Plaintiff's claim allowed. Damages assessed. Orders accordingly].

Cases referred to:

Eiap Teng Siyum [1988] 2 MLJ xxx ***(refd)***
Harry Seah Hong Meng v. Tan Siow Cher [1984] 2 MLJ xxix ***(refd)***
Mahat bin Abdul Majid v. Lau Kui [1986] 1 MLJ 315 ***(refd)***

For the plaintiff and 3rd party - Mahindar Singh; M/s. Mahindar & Co.
For the defendants - B.M. Bodipalar; M/s. Balendran Chong Haranay & Bodi

JUDGMENT

Haji Lamin Bin Haji Mohd Yunus FCJ:

At the time of the accident the plaintiff (PW2) was a fruit-seller at a market and at about 9.00 p.m. on 26 June 1983 she was a passenger in a motorcar No. TE 3467 which was proceeding from Kuantan towards the direction of Gambang on their way home at Tanah Puteh Baru, Batu 3. She was the only passenger in the car and she was sitting in the front seat beside the driver, who is her husband. According to her evidence, on arrival at the junction going into Tanah Puteh Baru, her husband stopped the car at a point where he intended to turn right into the road leading to Tanah Puteh Baru. Before he came to a stop, he gave a hand signal by putting out his right hand. PW2 saw a motor van coming from the opposite direction and in front of it was a motorcycle. After the motorcycle had passed, the motor van with registration number CT 6466, collided into PW2's car. According to PW2 the impact on her car was on the nearside somewhere in the centre. She also said that upon impact her car turned around and when it stopped, it was facing Kuantan. She said that before the accident the van was travelling on her side of the road. When she was cross-examined that if it was so then the van should be on her side of the road after the accident, her answer was that when the van collided into her car, her car "sudah menyerong" meaning in a slanting position when the van came and collided into her car at a point to the rear of her seat. PW1, who drew the sketch plan (P1) said in cross-examination that broken pieces of glass were found mostly at P and in his opinion looking at the damage of the car, the car must have crossed the centre white line a little into the other lane.

On liability, that was in brief the case for the plaintiff. For the defence, no witness was called.

From the sketch plan, broken pieces of glass are mostly found around the centre white line and in the absence of evidence to the contrary it is always a safe guide to adopt that the point of impact is at or around the point where pieces of glass are mostly found. The defence did not produce any evidence to dispute this. PW2 insisted that her car did stop at the junction and it was stationary when the van collided into it. She also said her car was on her side of the road. The fact that her car was stationary at the centre white line when the impact took place provides corroborative evidence to strengthen further the mute evidence of the presence of broken pieces of glass at the centre white line at which being the point of impact. PW1, who drew the sketch plan, has expresssed his views in regard to the position of the car at the time of the collision. I am not inclined to place great reliance on his opinion as he did not witness the accident and therefore it was mere conjecture. PW2 never admitted that her car had crossed the centre white line but merely said "menyerong". In all probability what she had said about the van travelling on her side of the road was true for the van must have crossed the centre white line a little and in the attempt to avoid a collision the driver of the van tried to swerve to the left but it was too late so that the offside from of the van, as evidenced by the damage to the van, knocked into the nearside of the car and sent it spinning. This explains the presence of broken pieces of glass around the centre white line. If the van had been travelling along its side of the road, in the first place there would not have been a collision. Secondly assuming that the van was travelling on its correct side of the road for a collision to take place the car must have crossed the white line and since it was still in motion, at the sight of the van approaching one can expect both drivers to take evasive

action. The driver of the van tried to swerve to the left while the driver of the car tried to swerve to the right but it was too late and a collision took place - hence the damage to the van being on the front offside while to the car at its nearside at the centre. But in that event the broken pieces of glass could not have been found around the centre white line. They could have been found anywhere in the van's side of the road. Since both vehicles were in motion, the collision could very well have taken place very much away from the centre white line.

Since the defence took the option of not producing any witness, I am therefore accepting the position that the car was stationary and on its correct side of the road when the collision occurred. In the circumstances the driver of the van was solely to blame.

Damages

(1) The sum of RM229 was agreed to being the cost of documents.

(2) For food and travelling while she was in General Hospital Kuantan (for about 11 days) and in Jerteh Hospital (for about 20 days) she is claiming the sum of RM2,000. I think it is a reasonable figure.

(3) With regard to pre-trial loss of earnings, the period shall be from 21 June 1983 to 31 January 1990 which will be about 79 months.

(4) As to her future loss of earnings at the time of the trial she was 50 years of age. I agree with the learned Counsel for the plaintiff that based on the cases cited, she should be given about 7 more years. The learned Counsel for the defendants submitted that there should not be future loss of earnings for the reason that after the accident her husband carried on her business. We are concerned with her own initiatives to earn and not with her husband's.

(5) She said that before the accident she was a fruit seller and should could make a profit between RM20 to RM30 per day. I take the average figure of RM25 profit per day for the present purpose and multiply it with 24 days in a month and that will be RM600 p.m.

(6)(a) For cerebral concussion based on the case of *Eiap Teng Siyum* [1988] 2 MLJ xxx the award is .. RM 1,500

(b) Laceration on left cheek 1 cm, 3 small lacerations on the chin and superficial abrasion on left elbow, the defendant's solicitors submitted a figure of RM2,000 .. RM 2,000

(c) Fracture of the lower end of the radius. There is deformity of the left wrist and the grip is weak. Based on the case of *Harry Seah Hong Meng v. Tan Siow Cher* [1984] 2 MLJ xxix, the award is .. RM 5,000

(d) Fracture of the left wrist based on the same case of *Harry Seah Siow Meng* the award is .. RM15,000

(e) Fracture of the neck of left femur based on the cases submitted by the defendants' solicitors the award is .. RM 6,000

(f) Fracture of the pelvis - separation of the left sacro illiac joint, fracture of the left acetabulum. Fracture of both rami of the pubic bone (Disruption of Pelvic Ring). With this the plaintiff has been in pain and unable to walk except with crutches and the left hip has restricted movement.

In the case of *Mahat bin Abdul Majid v. Lau Kui* [1986] 1 MLJ 315, the injuries as reported were:

(1) Fracture of left acetabulum

(2) Fracture of superior ramus

(3) The residuals are similar.

The injuries suffered by Zaleha, the would-be wife of Mahat in the *Mahat's* case were of about the same type as those suffered by the plaintiff in the case before me. The resultant effect is that the plaintiff in the present case is not able to walk without crutches. In the case of Zaleha she could not move her hips, knees and feet with normal facility and walking "was barely possible and is at a slow rate". She walked with a limp and was liable to lose balance easily. I urge myself to reflect sympathetically in both cases whether Zaleha and Fatimah (the plaintiff in the present case) can comfort each other through life during moments of pain and suffering. I have no doubt they will feel that life would be so much easier with the knowledge that one is no more or no less comfortable than the other. In the case of Zaleha, the quantum of damages was mutually agreed upon at RM40,000 and I do not see why Fatimah should be assesed any different. I therefore fix it at RM40,000.

On 100% liability, I therefore make the order on damages as follows:

1.	Agreed special damages	RM 229
2.	Cost of food and travelling	RM 2,000
3.	Pre-trial loss of earnings	RM 47,400
4.	Post-trial loss of earnings	RM 33,600
5.	Pain and suffering	RM 69,500
		RM152,729

I also order interests as prayed except for post-trial loss of earnings which will carry no interests, and costs.